IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA and OKLAHOMA SECRETARY OF THE ENVIRONMENT C. MILES TOLBERT, in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA,	)
Plaintiff,	)
vs.	) 4:05-CV-00329-TCK-SAJ
TYSON FOODS, INC., et al,	)
Defendants.	)

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THE VIDEOTAPED DEPOSITION OF

ROGER OLSEN, PhD, produced as a witness on behalf of the Defendants in the above styled and numbered cause, taken on the 2nd day of February, 2008, in the City of Tulsa, County of Tulsa, State of Oklahoma, before me, Lisa A. Steinmeyer, a Certified Shorthand Reporter, duly certified under and by virtue of the laws of the State of Oklahoma.

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results.

MR. GEORGE: Let's stop and change the tape here.

VIDEOGRAPHER: We're now off the Record. The time is 10:02 a.m. 10:03AM

(Following a short recess at 10:03 a.m., proceedings continued on the Record at 10:12 a.m.)

VIDEOGRAPHER: We are back on the Record. The time is 10:11 a.m. 10:12AM

Q Mr. Olsen, back to -- I'm sorry. Back to Exhibit 4, I think you put it away. We were talking about labs, and a time or two, sir, you have mentioned that data from some of the labs on particular samples may have been rejected. Do you 10:12AM recall that, saying that?

A Yes.

Q What do you mean by rejected?

A We have an extensive quality control procedure when we receive data back from a laboratory, and we 10:12AM review every piece of information that's received from that laboratory, review the laboratory's case narrative and their own internal QA/QC samples. We also have sets of samples that are blind standards, blind duplicates that we send to them, review that 10:13AM

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data, and that's put into our quality control report and that is work done under my direction through Todd Bergershire, and then they qualify the data. This is a typical procedure done by EPA all the time and really where that was developed and learned, those procedures on EPA projects. Now, we don't do a strict data validation because we don't review the laboratory notes but we review the important things, and we call it a QC control, and then we QC review, and then we produce a report, and that will have our analytical chemist's notes on there whether that data needs to be qualified. There's a variety of qualifiers. It usually needs to be estimated, usually a J estimate or --

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10:13AM

Q Usually a what?

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A Usually it's a J. That's just the EPA's signature for estimated, and there's a variety of things they add onto that determining -- depending on why it was estimated, and then there's an R. That means it's rejected.

10:14AM

Now, in the case of FoodProtech, that determination was made by Jodi Harwood. After we identified some potential problems, we went to her as the expert, and she worked with the labs through their procedures in determining what procedures she

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determined were correct for the samples that we were analyzing, and she actually made some recommendation. They changed some procedure, so there's some data that was rejected before a certain date and some data that was rejected after a certain 10:15AM
date, and there was some data that rejected -- all of the analysis were rejected, and so that determination was really determined by our quality control review, but we went to her for the definitive analysis of that data, and then our 10:15AM
quality control people made sure that that data was flagged with an R in the database, and that went to Drew Santini and he made sure it gets into the database, and that ultimately ends up in Robert van Waasbergen's hand with that qualifier on it. 10:15AM

Q Has all of the data from FoodProtech been rejected?

A No.

Q Okay. So some of the data generated by FoodProtech, including bacteria data, is being 10:15AM
relied upon as valid by experts retained by the Oklahoma Attorney General's office; correct?

A Yes, and they only did bacteria analysis.

Q Okay. How would I determine what data you have determined to be valid from FoodProtech and 10:16AM

what data you've rejected?
A You have all the reports, our quality reviews. That's all noted on those.
Q You believe I have the quality reviews. Is that the title of the report? 10:16AM
A Yes. It's a CDM document that we attach to all the laboratory reports.
Q Okay.
A It's a quality control review.
Q But now you have a database that has a list. 10:16AM
You can print out a list of all of the samples that have been rejected, all of the samples that have been qualified; correct?
A That's correct.
Q Okay, but you think you've also produced the 10:16AM
quality review sheets that came with some of the lab work; is that right?
A All the lab work we've received to date and have had the time to review, there's a quality review sheet with it. 10:16AM
Q Okay, and I don't have one of those in front of me, and I should have anticipated this issue. If I had a quality review sheet here in front of us today, what would I look for to determine readily whether all or part of the data on that report has 10:17AM

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been rejected or qualified?

A There's a summary sheet up front with things like did it meet holding times, a whole checklist of things that our quality reviewers do and check off. Plus, that top sheet has a summary of what they found, and then there's a signature of the chemist that was doing that, and behind that is the actual analytical report we received from the lab, and if the lab also puts in a case narrative, that would be there, too, and if they submit QA/QC samples, those would be there, too. So our analytical chemist that does review goes there, and you'll see their actual mark through a sample with the qualifier on it and any notes, and if they had to communicate with the lab, all these E-mail communications or phone conversations are attached in those data packages that are sent to you. 10:17AM 10:17AM 10:17AM

Q Mr. Olsen, do you all go through that process and create that document for every sample that you receive from every lab? 10:18AM

A Did it for FoodProtech, General Engineering Laboratory, A & L Laboratory, Environmental Microbiological Laboratory. Had not done that -- we did that for Aquatic Research.

Q You skipped North Wind? 10:18AM

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do the bulk of our samples. We request them very early for the case narrative that summarize their quality control, quality review reports. They're internal, and then we do another quality control review. 10:20AM

Q Mr. Olsen, when you are reviewing data in this case, sampling results to form the opinions that were expressed in your affidavit, what was -- what did you rely upon to distinguish valid from invalid data, these underlying sheets or a listing in a database? 10:20AM

A I was involved in both of those. So, for instance, I don't ever use rejected data.

Q But how did you determine that it might be rejected data when you were putting together your opinions; was it because you saw a flag in the database? 10:20AM

A Well, I was involved in the original rejections, so I knew which data was rejected and a lot of the data I know what it's qualified to, but it's identified in the database when it comes to us. 10:20AM

Q Okay, and you rely on the database in distinguishing rejected versus unrejected data; is that right?

MR. PAGE: Object to the form. 10:21AM

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A The data that came to me didn't have the rejected data in it. It automatically gets screened out in what's given to us for the signature.

Q Okay. So you only saw the valid data; is that right? 10:21AM

A I only used the valid data. I saw it all.

Q Someone else screened out the rejected data before you got it; is that right?

MR. PAGE: Object to the form.

A Again, I think I already described that process and who rejected it and how it gets into the database, and it's very clearly identified with a rejected statement. 10:21AM

Q Who screened out the rejected data for you before you did your analysis? 10:21AM

MR. PAGE: Same objection.

A I directed the person who qualified that with Dr. Harwood, and then when we create -- I think what you're asking is how do I create the data I used for the statistical analysis. That comes from Drew Santini through Rick Chappell in a request, you know, and that request screens out the rejected data. 10:21AM

Q Did you rely on any qualified data in your analysis in this case? 10:22AM

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A Depending on what it was, that qualified data usually came through in our -- in our request that I used, and as the expert in this area, I have to make a case-by-case determination whether that data was good for the purposes that I want to use it for. So in this case, we qualified a lot of the P data, phosphorus data, excuse me, phosphorus data and, again, when I talk phosphorus data, there's multiple forms of phosphorus. You know, there's soluble reactive phosphorus; there's total dissolved; there's dissolved total and so forth and so forth, so we analyze like six or seven forms of that, but when A & L was initially doing the samples, besides the coulometric data, we didn't reject that, but they were also analyzing a technique called 60-10, which is just ICP, not ICP-MS, which we changed to. We qualified all that data because we found an interference with a variety of compounds, and the higher concentrations weren't giving us good data. I could have used the lower concentrations, but any 60-10 data, it came through in the database to me to use, but I did not use any 60-10 data in my final analysis. So that's my determination that I don't want to use that data, I didn't need to, so to be conservative, I didn't use that qualified data.

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A That's correct.
Q Okay, and on the basis of some of the concerns voiced by Dr. Harwood in this and some other letters, you ultimately invalidated the work or the data generated by FoodProtech; correct? 12:00PM
A Not all of it. Some of it was deemed acceptable; some of it was rejected as we previously discussed.
Q Right. Did you believe Dr. Harwood's concerns were legitimate? 12:00PM
A She's the expert. I believed her.
Q You see on Page 3, turn, and I've underlined two sentences, and it appears to me that Dr. Harwood is challenging some support that FoodProtech put forward trying to justify their lab work. Do you recall that? 12:00PM
A Yes.
Q Okay, and the supporting documents that they identified appears that she is challenging them because they were not peer reviewed; is that right? 12:01PM
A That's what she says.
Q Okay. Can you read those two sentences, please, for the Record?
A Regarding 2.23 and 2.242, and let me check to see if I know what those are. I don't know what 12:01PM

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